

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0414
Indiana Gross Retail Tax
For 2000

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ISSUE

I. Farm Equipment – Gross Retail Tax.

Authority: IC 6-2.5-5-1; IC 6-2.5-5-2; IC 6-8.1-5-1(b); IC 6-2.5-5-2(b)(3); Graham Creek Farms v. Indiana Dept. of State Revenue, 819 N.E.2d 151 (Ind. Tax. Ct. 2004); Rotation Prods. Corp. v. Department of State Revenue, 690 N.E.2d 795 (Ind. Tax Ct. 1998). Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs, 550 N.E.2d 850 (Ind. Tax Ct. 1990); 45 IAC 2.2-5-6(d).

Taxpayer argues that the purchase of a "skid-steer" loader and three loader buckets was exempt from sales tax and that he is not required to now pay use tax.

STATEMENT OF FACTS

Taxpayer is in the business of raising beef cattle. In 2000, taxpayer purchased a "skid-steer" and three different sized buckets for use with the "skid-steer." Taxpayer did not pay sales tax at the time the purchase was made. The Department of Revenue (Department) subsequently conducted an audit of the particular dealership from which taxpayer purchased the equipment. The Department concluded that the purportedly exempt purchase of the equipment was "doubtful." In July of 2003, the Department issued a notice of "Proposed Assessment" stating that taxpayer owed use tax. Taxpayer disagreed with the assessment arguing that the equipment was purchased for an exempt purpose. Taxpayer submitted a protest, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Farm Equipment – Gross Retail Tax.

Taxpayer claims that the purchase of the "skid-steer" and the three loading buckets was not subject to sales tax and that the Department's subsequent assessment of use tax is unwarranted.

Taxpayer raises between 15 and 20 beef cattle each year. During the winter, the cattle are housed in one of two barns. Taxpayer states that the "skid-steer" is used to remove animal waste from the barns. During the summer, the cattle are pastured. During the time the cattle are pastured, the "skid-steer" is used to transport hay and feed to the cattle.

Indiana imposes a sales tax on “retail transactions made in Indiana.” IC 6-2.5-2-1(a). Indiana also imposes a functionally related use tax on the purchase of certain non-exempt tangible property that has escaped sales tax. Graham Creek Farms v. Indiana Dept. of State Revenue, 819 N.E.2d 151, 155 (Ind. Tax. Ct. 2004).

IC 6-2.5-5-1 and IC 6-2.5-5-2 provide a use tax exemption for tangible personal property used for agricultural purposes. IC 6-2.5-5-1 provides as follows:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail [sales] tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

IC 6-2.5-5-2 provides that:

Transactions involving agricultural machinery, tools, and equipment are exempt from the [sales] tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the [sales] tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

IC 6-2.5-5-1 and IC 6-2.5-5-2 require that a taxpayer claiming the exemption to be engaged in the direct production of food. “[T]he tangible personal property for which the taxpayer seeks the exemption must be integral and essential to its production process . . .” Graham Creek Farms, 819 N.E.2d at 156.

Taxpayer claims that the “skid-steer” and loading buckets are exempt from use tax. Therefore, taxpayer bears the burden of demonstrating how this equipment falls within the exemption set out in IC 6-2.5-5-1 and IC 6-2.5-5-2. Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990). The notice of proposed assessment sent to taxpayer is “prima facie evidence that the department’s claim for the unpaid tax is valid. The

burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). However, a tax exemption must not be read so narrowly “so as to exclude cases rightly falling within the ambit of that exemption provision.” Rotation Prods. Corp. v. Department of State Revenue, 690 N.E.2d 795, 797 (Ind. Tax Ct. 1998).

The Department’s proposed assessment is based on the conclusion that the exempt purchase of the equipment was “suspicious.” Taxpayer has stated that he is in the business of raising beef cattle, that the equipment is used to remove animal waste from the barns housing the cattle during the winter, and that the equipment is used to transport hay and feed to the cattle during the time the cattle are pastured. Taxpayer has stated that the equipment is not used for any plainly non-exempt purposes such as snow removal or road maintenance. Taxpayer has explained how the “skid-steer” and the buckets were specifically chosen because the barns have low ceilings and because the confined space within the barns limits the mobility of the equipment. Therefore, to the extent that taxpayer uses the “skid-steer” for “gathering, moving, or spreading animal waste,” the purchase of the “skid-steer” is exempt from sales or use tax. IC 6-2.5-5-2(b)(3).

However, to the extent that taxpayer uses the “skid-steer” to transport hay and other animal feed to cattle during the time the cattle are pastured, the “skid-steer” is not exempt. 45 IAC 2.2-5-6(d) provides in part as follows:

Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. *This exemption does not extend to the machinery, equipment, and tools used for the handling, movement, transportation or storage of feed prior to the actual feeding process. (Emphasis added).*

The “skid-steer” is not used to directly feed taxpayer’s cattle; it is an item of equipment used to transport hay and feed prior to the actual feeding process. Therefore, to the extent that taxpayer uses the “skid-steer” to transport hay and feed to the pastured cattle, the “skid-steer” is not exempt.

The taxpayer’s “skid-steer” is used partially for exempt purposes and partially for non-exempt purposes. This means that use tax liability is apportioned based upon the extent of exempt use and the extent of non-exempt use. Taxpayer may obtain an “Agricultural Equipment Exemption Usage Questionnaire” from the Department’s Tax Compliance Division to assist in calculating the apportionment factor and the amount of use tax owed the state.

FINDING

Taxpayer’s protest is sustained in part and denied in part.